

ORDINANCE NO. 3911

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, GRANTING TO ASTOUND BROADBAND, LLC, A NON-EXCLUSIVE FRANCHISE TO INSTALL, OPERATE, AND MAINTAIN A FIBER OPTIC TELECOMMUNICATIONS SYSTEM IN, ON, OVER, UPON, ALONG, AND ACROSS THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDMONDS, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, ESTABLISHING AN EFFECTIVE DATE, AND REPEALING ORDINANCE NO. 3371.

WHEREAS, Astound Broadband, LLC, has requested that the City grant it the right to install, operate, and maintain a fiber optic-based telecommunications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to Astound Broadband, LLC; and

WHEREAS, the City Council has the authority under state law to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions, **NOW, THEREFORE**,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- a. “Affiliate” means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.
- b. “City” means the City of Edmonds, Washington.
- c. “Communication Service” shall mean any telecommunications services, telecommunications capacity, or dark fiber, provided by the Franchisee using its Facilities, either directly or as a carrier for its subsidiaries, Affiliates, or any other person engaged in Communication Services, including, but not limited to, the transmission of

voice, data or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable. Communication Service shall also include non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the City. However, Communications Services shall not include the provision of cable television, open video, or similar services, as defined in the Communications Act of 1934, as amended, for which a separate franchise would be required.

d. “Facilities” shall mean the Franchisee’s fiber optic cable system constructed and operated within the City’s Public Ways, and shall include all cables, wires, conduits, ducts, pedestals, and any associated converter, equipment, or other facilities within the City’s Public Ways, designed and constructed for the purpose of providing Communication Service.

e. “FCC” means the Federal Communications Commission, or any successor governmental entity hereto.

f. “Franchise” shall mean the initial authorization, or renewal thereof, granted by the City, through this Ordinance, or a subsequently adopted Ordinance, which authorizes construction and operation of the Franchisee’s Facilities for the purpose of offering Communication Service.

g. “Franchisee” means Astound Broadband, LLC, a Washington limited liability company, or the lawful successor, transferee, or assignee thereof.

h. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

i. “Public Way” shall mean the surface of, and any space above or below, any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area, which shall entitle the City and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the Facilities. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way, which within their proper use and meaning entitle the City and the Franchisee to the use thereof for the purposes of installing or transmitting the Franchisee’s Communication Service over wires, cable, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Communication Service Facilities.

j. "Service Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

Section 2. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to utilize the Public Ways of the City for construction and operation of the Franchisee's Facilities and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for Franchisee's Facilities, and to provide Communication Service to persons located within the City.

Section 3. Construction Permits Required.

A. Prior to site-specific location and installation of any portion of its Facilities within a Public Way, the Franchisee shall apply for and obtain a Construction Permit pursuant to ECDC Chapter 18.60. In addition to any criteria set forth in ECDC Chapter 18.60, the City Engineer shall apply the following criteria in the issuance or denial of a Construction Permit application:

1. Whether the Franchisee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Franchisee;
2. Whether there is sufficient capacity in the Public Ways to accommodate the Franchisee's proposed Facilities;
3. The capacity of the Public Ways to accommodate additional utility, cable, and Facilities if the Construction Permit is granted;
4. The damage or disruption, if any, of public or private Facilities, utilities, improvements, service, travel or landscaping if the Construction Permit is granted;
5. The public interest in minimizing the cost and disruption of construction within the Public Ways; and
6. The availability of alternate routes and/or locations for the proposed Facilities.

B. Unless otherwise provided in said Permit and except for emergency repairs, the Franchisee shall give the City at least 48 hours notice of the Franchisee's intent to commence work in the Public Ways. The Franchisee shall file plans or maps with the City showing the proposed location of its Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any Public Way without said Permit, except as otherwise provided in this Franchise.

Section 4. Grant Limited to Occupation. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Public Ways of the City to the Franchisee, nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Franchise. The term of this Franchise shall be for a period of five (5) years from the date of acceptance as set forth in Section 31 (Acceptance), unless sooner terminated. This Franchise shall not renew unless and until the City and Franchisee reach agreement on a renewal and said agreement is approved by ordinance of the City Council. In the event that agreement cannot be reached, this Franchise shall terminate at the end of the then current term. Nothing in this Section prevents the parties from reaching agreement on renewal earlier than the time periods indicated.

Section 6. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said Public Ways of the City. However, the City shall not permit any such future franchisee to physically interfere with the Franchisee's Facilities and any such rights shall be granted pursuant to applicable law. In the event that such physical interference or disruption occurs, the City Engineer may assist the Franchisee and such subsequent franchisee in resolving the dispute. Further, this Franchise shall in no way prevent or prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways, all in compliance with this Franchise.

Section 7. Relocation of Facilities.

A. The Franchisee agrees and covenants, to protect, support, temporarily disconnect, relocate, or remove from any Public Way any portion of its Facilities when so required by the City Engineer by reason of traffic conditions, public safety, dedications of new Public Ways and the establishment and improvement thereof, widening and improvement of existing Public Ways, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; provided that the Franchisee shall in all cases have the privilege to temporarily bypass, in the authorized portion of the same public way upon approval by the City Engineer, any section of cable or any other facility required to be temporarily disconnected or removed.

B. Upon the reasonable request of the City Engineer and in order to facilitate the design of City street and right-of-way improvements, the Franchisee agrees to, at its sole cost and expense, locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's as-built plans and maps of its Facilities submitted pursuant to Section 9 (Maps and Records) of this Franchise are reasonably determined by the City Engineer to be inadequate for purposes of this paragraph. The decision to relocate said

Facilities in order to accommodate the City's improvements shall be made by the City Engineer upon review of the location and construction of the Franchisee's Facilities.

C. If the City Engineer determines that the project necessitates the relocation of the Franchisee's then existing Facilities, the City shall:

1. Within a reasonable time, which shall be no less than 30 days, prior to the commencement of such improvement project, provide the Franchisee with written notice requiring such relocation. Provided, however, that in the event an emergency posing a threat to public safety, health or welfare, or in the event of an emergency beyond the control of the City and which will result in severe financial consequences to the City, the City shall give the Franchisee written notice as soon as practicable; and
2. Provide the Franchisee with copies of information for such improvement project and a proposed location for the Franchisee's Facilities so that the Franchisee may relocate its Facilities in other Public Ways in order to accommodate such improvement project.
3. The Franchisee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the improvement project at least 10 days prior to commencement of the project. In the event of an emergency as described herein, the Franchisee shall relocate its Facilities within the time period specified by the City Engineer.

D. The Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Franchisee in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Franchisee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Franchisee shall relocate its Facilities as otherwise provided in this Section.

E. The provisions of this Section shall in no manner preclude or restrict the Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the Facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained Facilities; provided, that such arrangements do not unduly delay a City construction project.

F. The Franchisee will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Franchisee to relocate its

Facilities in a timely manner; provided, that the Franchisee shall not be responsible for damages due to delays caused by the City or circumstances beyond the reasonable control of the Franchisee.

G. The cost and expenses associated with relocation of the Franchisee's Facilities shall be the responsibility of the Franchisee unless: (1) the Franchisee had paid for the relocation cost of the same Facilities at the request of the City within the past five years; (2) aerial to underground relocation of Facilities is required by the City and the Franchisee has an ownership share of the aerial supporting structures, in which case the City shall be responsible for the additional incremental costs of underground relocation compared to aerial relocation, or as provided for in the Franchisee's tariff, if said amount is less; and, (3) when the City requests relocation solely for aesthetic purposes, unless the Franchisee agrees to be responsible for the costs thereof.

H. In the event that the City orders the Franchisee to relocate its Facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the Franchisee for the cost of relocation and the same proportion as their contribution to the cost of the project. In the event of an unforeseen emergency that creates a threat to the public safety, health, or welfare, the City may require the Franchisee to relocate its Facilities at its own expense, any other portion of this Section notwithstanding.

Section 8. Undergrounding of Facilities. Consistent with ECDC Chapter 18.05, all of Franchisee's facilities shall be placed underground.

Section 9. Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content prescribed by the City Engineer. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format specified by the City Engineer.

Section 10. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said Public Ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Franchisee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the state of Washington, including RCW 39.04.180 for the construction of trench safety systems.

B. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Public Ways, and all work by the Franchisee in any area covered by this Franchise and as described in this Section shall be performed in accordance with City of Edmonds Public Works Construction Standards and warranted for a period of one year.

C. The City may require the Franchisee, and its construction, relocation, or placement of ducts or conduits within the Public Ways to provide the City with additional ducts

or conduits and related structures necessary to access the same. The terms and conditions under which additional ducts and/or conduits shall be provided shall be consistent with Section 7 (Relocation of Communications System) of RCW Chapter 35.99.

D. The Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the Public Ways of the City in coordinate of construction activities and joint trenching projects. By February 1st of each calendar year, the Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the Public Ways of the City. The Franchisee shall also meet with the City and other grantees, franchisees, permittees, and users of the Public Ways of the City annually, or as determined by the City, to schedule and coordinate construction activities. The City Engineer shall coordinate all construction locations, activities, and schedules to minimize public inconvenience, disruption, or damage to the Public Ways of the City.

E. Consistent with RCW Chapter 35.99, the Franchisee may, on an annual basis, file notice with the City Clerk and the City Engineer of its desire to receive notices related to public improvement projects within the Public Ways of the City. In the event that the Franchisee is mailed such a notice and fails to coordinate installation or construction of its Facilities with the public improvement project, the City Engineer may deny the Franchisee's construction permit application for those portions of any of the Franchisee's construction projects which seek to disrupt the surface of any said street for a period of up to five years, as reasonably determined by the City Engineer for the purpose of protecting the City's investment in said public improvement projects. In the alternative, the City Engineer may require the Franchisee to fully restore the surface and sub-surface areas of such street to the condition that it was in immediately after completion of the public improvement project.

F. If either the City or the Franchisee shall at any time after installation of the Facilities plan to make excavations in area covered by this Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of written request to do so, an opportunity to share such an excavation. PROVIDED THAT:

1. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs;
2. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
3. Either party may deny such request for safety reasons or if their respective uses of the trench are incompatible.

Section 11. Restoration after Construction. The Franchisee shall, after installation, construction, relocation, maintenance, removal, or repair of its Facilities within the Public Ways, restore the surface of said Public Ways and any other City-owned property that may be disturbed by the work, to at least the same condition the Public Way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance, or repair, reasonable wear and tear excepted. The Public Works Department shall have final approval of

the condition of such Public Ways and City-owned property after restoration, all in accordance with the Edmonds Municipal Code and Public Works Construction standards. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Public Ways or other affected area at its sole cost and expense according to the time and terms specified in the Construction Permit issued by the City all in accordance with the applicable provisions of the Edmonds Municipal Code, as the same now exists or as it may hereafter be amended or superseded. All work and restoration by the Franchisee pursuant to this Section shall be performed in accord with City of Edmonds Public Works Construction standards and warranted for a period of one year.

Section 12. Emergency Work – Permit Waiver. In the event of any emergency in which any of the Franchisee's Facilities located in, above, or under any Public Way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose as promptly as reasonably possible after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the Edmonds City Hall is open for business.

Section 13. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation, or excavation of the Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining Public Way, street, or public place, or endangers the public, street utilities, or City-owned property, the City Engineer may reasonably require the Franchisee, at the Franchisee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and Public Ways. Such action may include compliance within a reasonably prescribed time.

In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, Public Ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the reasonable costs thereof.

Section 14. Recovery of Costs. The Franchisee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating

to the subject for which a permit fee is not established, the Franchisee shall reimburse the City directly for any and all reasonable costs, after receipt of an itemized bill.

In addition to the above, the Franchisee shall promptly reimburse the City for any and all reasonable costs the City incurs in response to any emergency involving the Franchisee's Facilities, after receipt of an itemized bill.

The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and a reasonable overhead. All billings will be itemized as to specifically identify the costs and expenses for each project for which the City claims reimbursement. The billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs at the conclusion of each project for information purposes. Provided, however, that this Section shall not be construed to allow the City to invoice Franchisee for costs incurred during the processing of Franchisee's initial franchise application to the extent that such costs were covered by application fees paid to the City pursuant to a fee schedule duly established by the City.

Section 15. Consideration. Pursuant to RCW 35.21.860, the City is precluded from imposing a fee on a "telephone business" as defined in RCW 82.04.065, except for certain authorized costs and expenses or any applicable tax authorized by RCW 35.21.865. This Franchise is premised upon the City and Franchisee's understanding that the activities proposed by the Franchisee constitute a "telephone business." As such, the rights granted under this Franchise are not conditioned upon payment of compensation in addition to reimbursement for costs and expenses as set forth in Section 14 (Recovery of Costs) herein, payment of the cost recovery fees as set forth by the City and payment of any applicable local utility tax applicable to Franchisee's operations. The City hereby reserves its right to impose a fee on the Franchisee, to the extent authorized by law, for purposes other than to recover its administrative expenses, if the Franchisee's operations are not those of a "telephone business" as defined in RCW 82.04.065, if the Franchisee's operations are now those of a telephone business and change in the future, or if statutory prohibitions on the imposition of such fees are removed. The City also reserves its right to require that the Franchisee obtain a separate agreement for its change in use, which agreement may include provisions intended to regulate the Franchisee's operations, as allowed under applicable law.

Section 16. Indemnification and Waiver.

A. Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person arising from injury, sickness, or death of any person or damage to property:

1. For which the negligent acts or omissions of Franchisee, its agents, servants, officers or employees in performing the activities authorized by this Franchise are the proximate cause;
2. By virtue of the Franchisee's exercise of the rights granted herein;

3. By virtue of the City permitting Franchisee use of the City's Public Ways or other public property;
4. Based on the City's inspection or lack of inspection of work performed by Franchisee, its agents and servants, officers or employees in connection with work authorized on the Public Ways or property over which the City has control pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise;
5. Arising as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon the Public Ways, in any Public Way, or other public place in performance of work or services permitted under this Franchise.

B. The provisions of Subsection A of this Section shall apply to claims by Franchisee's own employees and the employees of the Franchisee's agents, representatives, contractors, and subcontractors to which Franchisee might otherwise be immune under Title 51 RCW. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Franchisee acknowledges that the City would not enter into this Franchise without Franchisee's waiver thereof.

C. Inspection or acceptance by the City of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Franchisee has been given prompt written notice by the City of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised with Franchisee's consent prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim, provided that Franchisee shall not be liable for such settlement or other compromise unless it has consented thereto.

D. In the event that Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this Section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to the matter), to have been a wrongful refusal on the part of the Franchisee, then Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorney's fees, the reasonable costs of the City, and reasonable fees of recovering under this Subsection.

E. The obligations of Franchisee under the indemnification provisions of this Section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the City, its officers, agents, employees or contractors except to the extent that such claims, actions, damages, costs, expenses, and attorney's fees were caused by the sole negligence or any willful, malicious, or criminal act

on the part of the City, its officers, agents, employees or contractors. In the event that a court of competent jurisdiction determines that this Franchise is subject to the provisions RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

E. Notwithstanding any other provisions of this Section, Franchisee assumes the risk of damage to its Facilities located in the Public Ways and upon City-owned property from such activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful, malicious, or criminal act on the part of the City, its officers, agents, employees or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees or contractors.

Section 17. Insurance. The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Franchisee, its agents, representatives or employees. The Franchisee shall provide to the City, for its inspection, an insurance certificate naming the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such insurance certificate shall evidence:

A. Comprehensive general liability insurance, written on an occurrence basis, including contractual liability coverage, with limits, inclusive of umbrella or excess liability coverage, not less than:

- (1) \$3,000,000.00 for bodily injury or death to each person; and
- (2) \$3,000,000.00 for property damage resulting from any one accident.

B. Automobile liability for owned, non-owned and hired vehicles with a limit, inclusive of umbrella or excess liability coverage, of \$3,000,000.00 for each person and \$3,000,000.00 for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits, inclusive of umbrella or excess liability coverages, of not less than \$1,000,000.00.

The liability insurance policies required by this Section shall be maintained by the Franchisee throughout the term of this Franchise, and such other period of time during which the

Franchisee is operating without a Franchise hereunder, or is engaged in the removal of its Facilities. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this Section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

In addition to the coverage requirements set forth in this Section, the insurance certificate required by this Section shall contain language which provides that the policy may not be cancelled, reduced in coverage, nor the intention not to renew be stated until at least 30 days after receipt by the City of written notice of the same via U.S. mail. Within 15 days after receipt by the City of said notice, and in no event later than 5 days prior to said cancellation or non-renewal, the Franchisee shall obtain and furnish to the City replacement insurance certificate(s) meeting the requirements of this Section

Section 18. Abandonment and Removal of the Franchisee's Facilities. Upon the expiration, termination, or revocation of the rights granted under this Franchise, the Franchisee shall remove all of its Facilities from the Public Ways of the City within 90 days of receiving notice from the City Engineer. Provided, however, that the City may permit the Franchisee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within ninety (90) days of receipt of said notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section shall prevent the City from compelling the Franchisee to remove any such Facilities through judicial action when the City has not permitted the Franchisee to abandon said Facilities in place.

Section 19. Construction Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Franchisee shall furnish a street repair or sidewalk bond written by a corporate surety acceptable to the City equal to at least 125% of the estimated cost of restoring the Public Ways of the City to the pre-construction condition required by Section 11 (Restoration after Construction) of this Franchise. Said bond shall be required to remain in full force until 60 days after completion of the construction of Grantee's Facilities and other improvements from the Public Ways of the City, and said bond, or separate bond acceptable to the City, shall warrant all such restoration work for a period of one year. In the event that a bond issued to meet the requirements of this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Franchisee shall, prior to expiration of said bond, be responsible for obtaining a replacement bond which complies with the terms of this Section.

Section 20. Modification. The City and the Franchisee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon the written agreement of both parties to such alteration, amendment or modification. Said modifications shall be approved by

the City by ordinance and accepted by the Franchisee consistent with Section 31 (Acceptance) hereof.

Section 21. Forfeiture and Revocation.

A. This Franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the Edmonds Municipal Code. In addition to termination, the City may impose lesser sanctions, including, but not limited to, monetary penalties, for violation of this Franchise in accordance with the terms of the Franchise herein.

B. If the City has reason to believe that Franchisee is in violation of this Franchise or other provisions of the Edmonds Municipal Code, the following procedures shall be followed by the City:

1. The City shall provide Franchisee with a detailed written notice, by certified mail, detailing the violation, the steps necessary to cure such violation, and a reasonable time period within which the violation must be cured. Within thirty days (30) thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

2. Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the City, or where unusual weather, natural consequences (e.g., earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of Franchisee delay progress, provided that Franchisee has not, through its own actions or inactions, contributed to the delay. The amount of additional time allowed will be determined by the City. The extension of time in any case shall not be greater than the extent of the actual non-contributory delay experienced by Franchisee.

3. If said response is not satisfactory to City, the City may declare Franchisee to be in default, with written notice, by certified mail, to Franchisee. Within ten business days after notice to Franchisee, Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the Franchise terminated for cause or impose lesser sanctions.

4. If Franchisee files a timely written request for a hearing, such hearing shall be held within thirty (30) days after the City's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged non-compliance. Within ten days after the hearing, the City Council, on the basis of the record, will make the determination as to whether there is cause for termination, whether the Franchise will be terminated, or whether lesser sanctions should be imposed. The City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the City Council does not grant any additional period, the City Council may by resolution declare the Franchise to be terminated and forfeited or impose lesser sanctions.

5. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided the Franchisee is otherwise in compliance with this Franchise. In any such appeal, Franchisee shall be responsible for the costs of preparing and filing the City's administrative record with the Court and such costs shall be paid prior to the City's filing thereof.

C. In the event that the City elects to impose monetary penalties upon the Franchisee for failure to comply with the material provisions of this Franchise, said penalties shall be assessed at five hundred (\$500.00) per day, per violation, for each day beyond thirty (30) days that Franchisee has been in violation.

D. Monetary penalties may be assessed retroactive to the date that notification was provided to Franchisee in such cases where Franchisee has been non-responsive in correcting the violation or in the case of flagrant violations. If payment of any penalty is delinquent by three (3) months or more, the City may: (1) require partial or total forfeiture of any performance bond or other surety posted by Franchisee; (2) terminate this Franchise; and/or (3) commence a civil action in a court of competent jurisdiction to collect said penalty.

E. Franchisee shall not be deemed to be in default, failure, violation, or non-compliance with any provision of this Franchise where performance was rendered impossible due to materially, substantially, and reasonably to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike, lock-out, boycott, prevailing war or war preparation, or bona fide legal proceedings, beyond the control of Franchisee.

Section 22. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of any Facilities by the Franchisee, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of the law.

Section 23. Survival. All of the provisions, conditions, and requirements of this Franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law, by statute, or by contract. The provisions, conditions, and requirements of Sections 7, Relocation of Facilities; 8, Undergrounding of Facilities; 10, Work in Public Ways; 11, Restoration after Construction; 13, Dangerous Conditions, Authority for City to Abate; 16, Indemnification and Waiver; 17, Insurance; and 18, Abandonment and Removal of the Franchisee's Facilities, shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Facilities from the Public Ways, transfers ownership of said Facilities to a third party, or abandons said System in place, all as provided herein. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Franchisee and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs,

successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 24. Severability. In any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise.

Section 25. Assignment. This agreement may not be assigned or transferred without prior written notice to the City, except that the Franchisee may freely assign this Franchise without notice in whole or part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

Franchisee may, without the prior written notice to the City: (i) Lease the Facilities, or any portion thereof, to another; (ii) Grant an Indefeasible Right of User Interest in the Facilities, or any portion thereof, to another; or (iii) Offer or provide capacity or bandwidth in its Facilities to another, PROVIDED THAT: Franchisee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of this Franchise.

Section 26. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:

City of Edmonds
City Engineer
121 5th Avenue North
Edmonds, WA 98020
Telephone: (425) 771-0220

Franchisee:

Astound Broadband, LLC
401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033
ATTN: Steve Weed, CEO, and Jim Penney, EVP
Telephone: 425-896-1891

Notice shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 27. Entire Franchise. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this Franchise. Provided further, that the City and Franchisee reserve all rights they may have under law to the maximum extent possible and neither the City nor Franchisee shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Franchise.

Section 28. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees, including fees upon appeal of any judgment or ruling.

Section 29. Non-waiver. Failure of the City to declare any such breach or default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

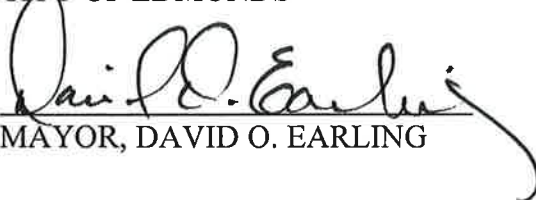
Section 30. Governing Law/Venue. This Franchise shall be governed by and construed in accordance with the laws of the state of Washington. The venue and jurisdiction over any dispute related to this Franchise shall be with the Snohomish County Superior Court, or, with respect to any federal question, with the United States District Court for the Western District of Washington, at Seattle.

Section 31. Acceptance. Within 60 days after the passage and approval of this ordinance, this Franchise shall be accepted by Franchisee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this Franchise within said period of time shall be deemed a rejection thereof, and the rights and privileges herein granted shall, after the expiration of the 60 day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect 5 days after the passage and publication of an approved summary thereof consisting of the title.

Section 33. Repealer. Ordinance No. 3371, An Ordinance granting an Open Video Franchise to Black Rock Cable, Inc. is hereby repealed and that franchise terminated upon the Effective Date.

CITY OF EDMONDS


MAYOR, DAVID O. EARLING

ATTEST/AUTHENTICATED:


CITY CLERK SANDRA S. CHASE

APPROVED AS TO FROM:
OFFICE OF THE CITY ATTORNEY:

By: _____

JEFF TARADAY

FILED WITH THE CITY CLERK:	02-15-2013
PASSED BY THE CITY COUNCIL:	02-19-2013
PUBLISHED:	02-24-2013
EFFECTIVE DATE:	03-01-2013
ORDINANCE NO.: 3911	

SUMMARY OF ORDINANCE NO. 3911

of the City of Edmonds, Washington

On the 19th day of February, 2013, the City Council of the City of Edmonds, passed Ordinance No. 3911. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, GRANTING TO ASTOUND BROADBAND, LLC, A NON-EXCLUSIVE FRANCHISE TO INSTALL, OPERATE, AND MAINTAIN A FIBER OPTIC TELECOMMUNICATIONS SYSTEM IN, ON, OVER, UPON, ALONG, AND ACROSS THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDMONDS, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, ESTABLISHING AN EFFECTIVE DATE, AND REPEALING ORDINANCE NO. 3371.

The full text of this Ordinance will be mailed upon request.

DATED this 20th day of February, 2013.



City Clerk, Sandra S. Chase

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

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The full text of this Ordinance will be mailed upon request.
DATED this 20th day of February, 2013.

City Clerk, Sandra S. Chase

Published: February 24, 2013.

Summary of Ordinance No. 3911

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

February 24, 2013

and that said newspaper was regularly distributed to its subscribers during all of said period.

Karen E. Zomer

Principal Clerk

Subscribed and sworn to before me this

25th

day of February, 2013

Diana L. Hendrix

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

